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SUPREME COURT OF THE UNITED STATES

October Term, 1940

No. 755

J. ROB GRIFFIN, Administrator with Will Annexed of the
Estate of Robert D. Gordon, Deceased, *Petitioner*,

vs.

JOHN D. McCOACH, *Trustee.* o

**BRIEF FOR THE RESPONDENT IN OPPOSITION TO
THE PETITION FOR WRIT OF CERTIORARI**

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BRIEF FOR THE RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

I.

STATEMENT OF THE CASE

The following facts should be considered in connection with the summary statement of the case made by petitioner.

John D. McCoach, Trustee, was the named beneficiary of the policy of insurance, whose proceeds are in controversy. The defendants in the bill of interpleader filed by the Prudential Insurance Company in their answer asked that the proceeds of the policy be adjudged in favor of John D. McCoach, Trustee (R. 2), and the assignees of the defendants named asked that judgment be rendered in favor of John D. McCoach, Trustee. (R. 9.) The record does not show that McCoach, Trustee, claimed as trustee for the three assignees instead of the original members

of the syndicate, but only that in the event he recovered the proceeds, that he intended to pay over to each of the assignees their pro rata share. (R. 9.) This is not a suit filed by a citizen of one state against a citizen of another, but an interpleader suit (R. 2), arising out of an action filed by petitioner.

II.

ARGUMENT

Petitioner's six points fall into two classifications: (a) That the contract involved in this proceeding is a Texas contract; and (b) that regardless of where the contractual rights arose, that the trial court by virtue of sitting in Texas, must apply an alleged public policy of the State of Texas. They will be answered in that form.

THE CONTRACT IN CONTROVERSY IS NOT A TEXAS CONTRACT

There are three contracts or agreements considered in this controversy:

1. The principal contract and the one in controversy is the insurance policy issued by the Prudential Insurance Company of America, and this is conceded to be a New York contract. (This will hereafter be referred to as the insurance contract.)

2. The second contract which is considered is the agreement made between Robert D. Gordon and Alfred D. Leonard, Max I. Brenwasser, George B. Cody, Nathan Schweiger, John D. McCoach, Frederick W. Mead, and Julius A. Bates. This is the contract which appellant contends is a Texas contract. (This will hereafter be referred to as the agreement.)

3. The third contract is in reality three contracts, being the assignments from Max I. Brenwasser to Harry G. Nelson, from Julius A. Bates to George E. Bradnack, and from Alfred D. Leonard to his son, LeRoy E. Leonard. It is conceded that all of these assignments were made in the State of New York, and that all parties involved in the assignments were citizens of the State of New York. (These will hereafter be referred to as the assignments.)

The fund which is the subject of controversy in this cause was paid into the registry of the court by virtue of the insurance contract issued on the life of Robert D. Gordon. Any recovery of the fund must be based on the terms of that contract. Petitioner does not base any of his rights of recovery upon the terms of this contract.

His contention is that the agreement which was made by virtue of correspondence between Gordon in Texas and the parties in New York, was a contract made in Texas. This may or may not be true, but he is not claiming any right of recovery by virtue of the terms of this agreement. This is not an action to enforce the agreement but to determine the proper party to recover under the insurance contract.

Petitioner claims no right of recovery by virtue of the insurance contract nor by virtue of the agreement, but only by virtue of the assignments to which he was not a party. His contention, briefly, is that when the agreement was made, which is possibly governed by the laws of the State of Texas, in regard to the New York insurance contract, that this agreement so affected the original insurance contract that when subsequent to the agreement, assignments of

interest under the insurance contract were made, that these assignments would vest in him some interest.

Petitioner contends that the assignments would have been void if made in Texas, but he does not contend that anything was done within the State of Texas which is forbidden by or frowned upon by the legislative enactments of this State or the decisions of the State Courts. Every act complained of by petitioner is not only proper under the laws of the State where performed, but is sanctioned by the laws of that State. His contentions are based upon the assumption that it was necessary to adjudicate the issues of this case by virtue of the agreement, and not by virtue of the terms of the insurance contract. All of the funds in controversy were derived from the insurance contract, and this is admittedly a New York contract and governed by the laws of that State. All that the Circuit Court of Appeals has decided in this case is that where the rights of the parties in a controversy are fixed by virtue of a contract entered into under the laws of the State of New York, that the rights of the parties under that contract will be enforced in accordance with the laws of the State of New York.

There is no question involved in this proceeding as to the right of the parties to enforce the agreement which is contended to have been made in Texas. The only point in controversy is who is entitled to receive the proceeds of the insurance policy. The only thing that was ever done in Texas in regard to the insurance policy was that while the insured was living in the State of Texas, he agreed with the beneficiaries living in the State of New York that the beneficiary of the policy should be changed. A

change of beneficiary in a life insurance policy is not a new contract but only an amendment to the pre-existing contract, and does not change the situs of the original contract. *Pendleton v. Great Southern Life Insurance Co.* (Sup. Ct. of Oklahoma), 273 Pac. 1007. The agreement to change the beneficiary or to assign part of the proceeds of the property are separate and independent contracts and are governed by the laws of the State where made. *Manhattan Life Insurance Co. v. Cohen*, 139 S. W. 51. The fact that some separate independent contract may be governed by the laws of the State of Texas does not affect the fact that the principal insurance contract is governed by the laws of the State of New York.

The assignments made in New York are New York contracts and are valid. They are independent of the agreement claimed to be made in Texas and add nothing to that agreement.

Unless petitioner can show that the agreement in Texas makes both the insurance contract and the assignments subject to the law of the State of Texas his contentions fail. This he has not done.

THE ISSUES SHOULD BE DETERMINED BY THE LAW OF THE STATE OF NEW YORK

Petitioner has misinterpreted the decision of the Circuit Court and the rule laid down in *Erie Railway Company v. Tompkins*, 304 U. S. 64. The Courts of the United States are required to regard the laws of the several States as rules of decision in cases where they apply but this does not require the Courts of the United States to necessarily apply the laws of the States where they are sitting. Ordi-

narily this will be so because the cause of action arose in that jurisdiction, but it is not the rule set up to guide the Courts. As a general rule, a contract is governed by the law of the State where made, and the law of the State where made determines all questions in regard to the capacity to contract, the illegality of the contract, etc. (*Restatement of the Law of Conflict of Laws, Sec. 332, 347*) and the forum applies the law of the State where the contract is made. This is the Texas rule. This is also the Texas rule in regard to insurance contracts. *American National Insurance Co. v. Smith* (writ of error refused), 13 S. W. (2d) 720-722.

In *Seiders v. Merchants Life Association of the United States* (Sup. Ct. of Texas), 93 Tex. 194, the Court applied the law of the State of Missouri when it found that the insurance contract involved was a Missouri contract, regardless of the fact that the insured and beneficiary resided in Austin, Texas, and the company had a permit and was doing business in the State of Texas. In *New York Life Insurance Co. v. English* (Sup. Ct. of Texas), 95 Tex. 391, the Court applied the statutory law of the State of New York when it found that the policy was a New York contract, even though the policy was issued on the life of a citizen of the State of Texas.

As stated by this Court in the *Erie* case, the statute under consideration (Section 34, Federal Judiciary Act of September 24, 1789), attempts to promote uniformity of law throughout the United States. The position taken by the petitioner results in the very antithesis of this aim. If the Courts sitting in each of the other 47 States are to be forced or allowed to wholly disregard the law of

the State of New York dealing with an admitted New York contract, and apply the law of the States in which they are sitting, instead of there merely being disharmony between the decisions of a State Court and the Federal Court sitting in that State, there is a possibility of 47 different interpretations of the laws of the State of New York. Such a contention is neither within the spirit nor the letter of the *Erie case*. The Courts of the United States since the decision in the *Erie case* have consistently held that regardless of where the Court is sitting, when a contract is involved which arose and is governed by the laws of one State, that the law of the State which begot the contract will be applied. *Mutual Benefit, Health and Accident Association v. Bowman*, 304 U. S. 549.

Whenever policies of insurance are issued and delivered in certain States they become contracts of that State and are governed by the laws of that State. *Equitable Life Assurance Society of the United States v. Aaron*, 108 Fed. (2d) 777, 778; *Malloy v. New York Life Insurance Co.* (writ of certiorari denied, 308 U. S. 572), 103 Fed. (2d) 439, 443.

There is no disparity between what was done by the Circuit Court and what would have been done in the Courts of the State of Texas. The only contention that petitioner raises that would take the instant case out of the Texas Conflict of Law rule, as announced above, is on the basis of public policy.

Petitioner insists that certain actions in this cause are against the public policy of the State of Texas.

"It is easy to say a thing is against public policy, but that does not make it so. Public policy is manifest-

ed by public acts, legislative and judicial, and not private opinions, however eminent." (*Giant-Powder Company v. Oregon Pacific Railway Co.*, 42 F. 470, 474.)

There has been no statute enacted by the Legislature of the State of Texas which would prohibit a recovery by the respondent in this cause. The only thing which can be used to determine if there is a public policy, as stated by the petitioner, are the decisions of the Courts of the State of Texas.

Petitioner does not cite a single Texas case which holds that in a situation of this sort that the Texas Courts would not allow this respondent to recover as beneficiary under the policy. As shown above the general Texas rule is contrary to this contention.

Petitioner relies upon *Wilke v. Finn*, 39 S. W. (2d) 836, and *Cheeves v. Anders*, 87 Tex. 287. Those cases deal, however, only with Texas contracts, and do not discuss the point involved in this cause.

The other case relied upon is *Manhattan Life Ins. Co. v. Cohen*, 139 S. W. 51, and that case deals with the assignment of a policy of insurance. It recognizes that the assignment of a policy is separate and distinct from the original contract, and petitioner's only rights in this cause arise out of such a separate and independent contract which does not affect the principal contract, and in addition that case specifically decides that the contract there under consideration was a Texas contract.

It is apparent that no Texas Court has held as contended by the petitioner. There is no general public policy against the assignment of an interest in a life insurance policy, and, in fact, it has been held by this Court on sev-

eral occasions that such assignments are proper. *Midland National Bank of Minneapolis v. DeSoto Life Insurance Co.*, 277 U. S. 346, 350. The effect of holding otherwise is pointed out in *Grigsby v. Russell*, 222 U. S. 149.

On other questions of public policy, the Courts of Texas have not held in conformity with petitioner's contention. The State of Texas has established a public policy by a statute which forbids a common carrier from placing in its bill of lading stipulations restricting its liability and declaring such stipulations null and void. In the early case of *Ryan and Company v. M. K. & T. Railway Co.* (Sup. Ct. of Texas), 65 Tex. 13, a contract of carriage had been made in Missouri by a resident of Texas. The goods were to be transported from Missouri to Texas. In the contract was a stipulation that the carrier was exempt from liability for loss or damage to the goods by destruction by fire. The Court, after deciding that the contract of carriage was a Missouri contract, even though it would have to be partially performed in Texas, applied the Missouri law, disregarding the Texas public policy.

There are numerous statutory enactments in the State of Texas protecting property of married women. These enactments are definite statements of public policy on this subject. In *Merrielles v. State Bank of Keokuk*, 24 S. W. 564, an attachment lien had been foreclosed upon the separate property of a married woman. In disposing of the case upon appeal the Court said (page 565, paragraph 4):

"Appellant, in her fourth assignment, complains that 'the Court erred in submitting to the jury the laws of Iowa to create a liability against the separate real estate of a married woman situated in Texas, con-

trary to the Constitution, laws and public policy of Texas, and in overruling the motion for a new trial based on this ground.' Without undertaking an extended discussion of this question, we express the conclusion that the Court correctly applied the law of Iowa—the 'lex loci Contractus'—in the enforcement of the obligations in suit. This action, we think, was justified by the views of our Supreme Court in *Ryan v. Railway Co.*, 65 Tex. 13, et seq."

In a similar case where the parties resided in Arizona, the law of the State of Arizona was applied and execution was allowed to be had upon the separate property of a married woman even though it was located in Texas. *Walker v. Goetz*, 218 S. W. 569. Thus in this proceeding we have the Court of the United States applying the identical rule that would have been applied by the Courts of the State of Texas, and, therefore, a different situation from that presented in *Sampson v. Channell*, 110 Fed. (2d) 754.

In connection with petitioner's contention about public policy, it should be borne in mind that in this cause the respondent was not attempting to enforce any rights as against the citizens of the State of Texas. An interpleader suit is nothing more than where two or more persons are suing a stakeholder, claiming the funds, and the stakeholder confesses liability for the amount sued for and refuses to pass upon the merits of the claim. The mere fact that the insurance company in the instant case has tendered the funds into Court does not make this a suit by the petitioner against the respondent or vice versa. Neither is asking for a judgment against the other, and no judgment could be rendered which would decree that one party must pay to the other so much money. The only judgment that

could be entered is to award one party the funds on deposit in the registry of the Court.

It has long been recognized that "the filing of this interpleader and payment into Court by the insurer does not affect the rights of the claimed beneficiaries." (*Kansas City Life Insurance Co. v. Jones*, 21 Fed. Sup., 159, 160) and that in interpleader situations, even though they involve claimants residing in different States, the decision in the interpleader suit should be the same whether the interpleader is filed in New York or Texas. There is no question as to what the decision in this case would have been if the interpleader suit had been filed in New York. *Steinback v. Diepenbrock*, 37 N. Y. Sup. 279, 158 N. Y. 24, *Warnock v. Davis*, 104 U. S. 775.

The Courts of the State of Texas have recognized that an interpleader suit is not the same as an ordinary cause of action, and that neither party is attempting to assert a right against the other, but only to establish a claim to a fund. *Sharp v. American National Insurance Co.*, 126 S. W. (2d) 50, 52.

At most, the public policy of a State will only protect the citizens of that State and claims made against them. It will not reach out and interfere with the rights of persons of another State as against each other.

In this connection, the language of this Court in *Bond v. Hume*, 243 U. S. 15, is peculiarly applicable when it says:

"It is obvious on the face of the pleadings, as stated in the certificate, that the contract the enforcement of which was sought was valid under the laws of the State of New York, the place where it was entered into and

where it was executed, and this validity was not and could not be affected by the laws of the State of Texas, as, in the nature of things, such laws could have no extraterritorial operation."

As heretofore pointed out, petitioner's rights could only arise by virtue of contracts made in the State of New York, and his attempt to inflict upon those contracts the laws of the State of Texas is an attempt to give those laws extraterritorial effect.

It is misleading to say that the opinion of the Circuit Court holds that an assignment of a life insurance policy is governed by the laws of the State where the policy was issued, when this contract of assignment was made in another State. The Circuit Court has correctly held that an independent contract which incidentally affects a principal contract does not change the situs of the principal contract.

CONCLUSION

We submit that the decision of the Circuit Court of Appeals has correctly decided the issues involved in this controversy in accordance with the applicable rules of law of both this Court and the Courts of the State of Texas, and there is no necessity for the granting of a writ of certiorari and a review of this case by this Honorable Court.

Respectfully submitted,

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FRANK C. BROOKS,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES.

No. 755.—OCTOBER TERM, 1940.

J. Rob Griffin, Administrator With
Will Annexed of the Estate of
Robert D. Gordon, Deceased, Pe-
titioner,

vs.

John D. McCoach, Trustee.

On Writ of Certiorari to
the United States Circuit
Court of Appeals for the
Fifth Circuit.

[June 2, 1941.]

Mr. Justice REED delivered the opinion of the Court.

This is an action, begun in the United States District Court for the Northern District of Texas, by the personal representatives substituted for the heirs at law of Colonel Robert D. Gordon, who died a citizen and resident of Texas, against the Prudential Insurance Company of America to collect an insurance policy on the life of the decedent. The Company filed a bill of interpleader (49 Stat. 1096; 28 U. S. C. A. § 41(26)) making the respondent John D. McCoach, Trustee, and other alleged claimants parties and tendering the net amount due under the policy. The interpleader was allowed, the Company discharged from the litigation and the interests of all parties to the suit other than petitioner and respondent disposed of by the decree in a manner to which no one objects here. The controversy still to be decided is as to whether the estate or the Trustee is entitled to certain portions of the insurance. The circumstances giving rise to the issue follow.

Colonel Gordon, the insured, interested seven persons in Texas oil developments, including McCoach, the Trustee, in his individual capacity. They operated as a New York common law association called the Middleton Tex Oil Syndicate. The record here shows that "Prior to the issuing of the policy and thereafter, the members advanced considerable money to Gordon, and the premiums on the policy were paid by the members of the syndicate at Gordon's request, upon his agreement to repay the syndicate. Premiums were paid on the policy by the syndicate, in accordance with this agreement and were never repaid by Gordon." A term insurance policy was taken out by Gordon with the Syndicate named as beneficiary.

When the policy was issued, and at all times subsequent until his death, Gordon was a citizen of Texas. The Syndicate originally had physical possession of the policy. Two years after its issuance the Syndicate ceased operations. In 1924 due to financial reverses it ceased to do business and the members formed a new association called the Protection Syndicate. McCoach became and continues as Trustee of the Syndicate. It was organized "for the sole purpose" of paying the premiums on the policy and receiving and distributing the proceeds among the members. This it did until the insured's death. The beneficiary in the policy was changed to make the members of the Protection Syndicate the beneficiaries. By arrangement between the decedent and the members of the Protection Syndicate in 1934 a further change of beneficiaries was made by which, in consideration of the insured's release of the right to change beneficiaries on presentation of the policy for endorsement, hitherto retained, one-eighth of the disability proceeds of the policy were to be paid the insured and one-eighth of the death proceeds to his wife and the remaining seven-eighths to the Trustee for the members of the Protection Syndicate.

"The application for the policy was signed by Gordon in the State of New York, and forwarded to the home office of the Prudential Insurance Company in the State of New Jersey, and there acted upon, and the policy was delivered in the State of New York." The later arrangement by which Gordon and his wife became beneficiaries of one-eighth of the proceeds was consummated by certain forms furnished by the Prudential and "transmitted . . . from Middletown, N. Y., to Tyler, Texas, for Colonel Gordon's signature. They were there executed by Colonel Gordon before a notary public in Tyler, Texas, and returned to Middletown, N. Y., where they were executed by the parties residing there, from whence they were sent by Schweiger [an agent of the Prudential and a member of the Syndicate], with the policy, to the home office at Newark, N. J., and subsequently the forms were indorsed on the policy and it was returned directly from New Jersey to the beneficiaries in New York."

Thereafter three of the members of the Protection Syndicate separately assigned their interests in the policy to three individuals not previously interested in the transaction. These assignees paid their proportion of the premiums after the respective assignments.

The District Court decreed that Mrs. Gordon should receive her one-eighth and that the balance of the proceeds should be paid the Trustee for the benefit of the cross-defendants, members of the Protection Syndicate. The decree was based on a finding that the policy was a New York contract and that the subsequent changes were made in New Jersey and delivered in New York. Further the District Court concluded that the relation of debtor and creditor existed between the members of the Syndicate and their assignees upon the one hand and the insured upon the other and that therefore all the cestuis que trustent had an insurable interest in Colonel Gordon's life.

An appeal limited to the "correctness of the judgment of the trial court concerning the persons entitled to receive the assigned interests" was prosecuted on an agreed statement of the record under Rule 76 of the Rules of Civil Procedure. In the statement petitioner sets out two points now relied upon for reversal. First: That the assignment and change of beneficiary was governed by the law of Texas; that the Trustee claimed only under the assignment; that beneficiaries must have an insurable interest under Texas law and that the assignees had none. Hence the personal representative was entitled to recover their portions of the policy for the estate. *Wilke v. Finn*, 39 S. W. (2d) 836. Second: That if the whole transaction was governed by the law of another state than Texas, in which other state an insurable interest was not required, the United States District Court sitting in Texas was bound by the public policy of Texas which forbids persons without an insurable interest to collect in Texas, as beneficiaries, the proceeds of insurance policies.

The Circuit Court of Appeals affirmed. 116 F. (2d) 261. It held too that the policy was a New York policy, governed by the law of that state, and that as the subsequent changes were made pursuant to agreements contained in the original policy, they did not amount to new contracts or change the governing law. Cf. *Aetna Life Insurance Company v. Dunken*, 266 U. S. 389. The Court said:

"Under the terms of the policy, a New York contract, no restrictions were placed upon assignments relating to insurable interest. None was created by the laws of New York. Each of the assignments was executed and delivered in New York by residents of that state to other residents. They were New York contracts and valid under its laws. To apply the laws of Texas to the New York contracts would constitute an unwarranted extra-territorial control of

contracts and regulation of business outside of Texas in disregard of the laws of New York; this is not changed by the trial of the suit in a court sitting in Texas."

As to the violation of the claimed public policy of Texas against beneficiaries with non-insurable interests, the Court of Appeals decided that the rule could not be applied where, as here, a "fair and proper insurable interest" existed when the policy was issued. 116 F. (2d) 261, 264. Certiorari was sought and allowed, 312 U. S. —, on the ground among others of a conflict between the instant case and *Sampson v. Channell*, 110 F. (2d) 754, 759-62, where the First Circuit held that a United States court must apply the conflict of laws rules of the state where it sits.

For the reasons given in *Klaxon Company v. Stentor Electric Manufacturing Company*, No. 741 this term, decided today, we are of the view that the federal courts in diversity of citizenship cases are governed by the conflict of laws rules of the courts of the states in which they sit. In deciding that the changes made in the insurance contract left its governing law unaffected¹ and that the laws of Texas could not be applied to a foreign contract in Texas courts,² the federal courts were applying rules of law in a way which may or may not have been consistent with Texas decisions. Likewise it is for Texas to say whether its public policy permits a beneficiary of an insurance policy on the life of a Texas citizen to recover where no insurable interest in the decedent exists in the beneficiary. The opinion does not rest its conclusions upon its appraisal of Texas law or Texas decisions but upon decisions of this Court inapplicable to this situation in the light of *Erie Railroad v. Tompkins*, 304 U. S. 64, and *Ruhlin v. New York Life Insurance Company*, 304 U. S. 202, 205.³ The statement in the opinion "that it is immaterial, in so far as the decision of this case is concerned, whether the law of Texas or the law of New York be applied" we understand, from a reading of the whole opinion, to mean that while an insurable interest is required in Texas and not in New York, the lack of insurable interest is immaterial in this case even in Texas because "the insurer ac-

¹ Cf. *Miller v. Campbell*, 140 N. Y. 457.

² Cf. *Union Trust Co. v. Grosman*, 245 U. S. 412.

³ Compare *Grigsby v. Russell*, 222 U. S. 149; *Connecticut Mutual Life Ins. Co. v. Schaefer*, 94 U. S. 457, relied upon below.

knowledge liability and paid the money into court. This being so, not only does the objection of wagers disappear, but also the claimed principle of public policy." But this is something to be decided according to Texas decisions to none of which the opinion refers. Cf. *Wilke v. Finn*, 39 S. W. (2d) 836; *Cheeves v. Anders*, 87 Texas 287. The decision must be reversed and remanded to the Circuit Court of Appeals for determination of the law of Texas as applied to the circumstances of this case.

In view of the holding quoted from the opinion below, page 3, *supra*, that to apply the laws of Texas to New York contracts when Texas citizens were parties would constitute an unwarranted extra-territorial control of contracts and regulation of business, it seems necessary to examine that position as it may be determined upon remand that these are foreign contracts and under Texas law unenforceable as contrary to the public policy of Texas because the assignees have no insurable interest. It would then be necessary to decide whether the courts of Texas could constitutionally apply Texas law to a foreign contract, valid where made, because such contract is contrary to the state's public policy.⁴ If the Circuit Court of Appeals was correct in its view that the Constitution foreclosed application of such a Texas public policy to this case, the only question open on remand would be whether the contract sued upon was a Texas contract.

But the cases relied upon in the Court of Appeals to support its holding⁵ do not in our opinion decide this question. *Overby v. Gordon* holds that the adjudication of a probate court of Georgia that the decedent was a resident of that state was a proceeding in rem and did not bind the courts of the District of Columbia in a suit to determine anew decedent's domicile. *New York Life Insurance Company v. Head* passed upon the application, by Missouri courts, of Missouri statutes providing for an extension of insurance on default of premium to an insurance contract assumed as of Missouri, though the insured at the time of issue and thereafter was a citizen of New Mexico. A New York loan agreement subsequent to the issuance of the policy between the insured and the Company, a citizen of New York, provided for extension after de-

⁴ Cf. *Sampson v. Channell*, 110 F. (2d) 754, 759.

⁵ *Overby v. Gordon*, 177 U. S. 214, 222; *New York Life Insurance Co. v. Head*, 234 U. S. 149; *Bond v. Hume*, 243 U. S. 15; *Aetna Life Insurance Co. v. Dunken*, 266 U. S. 389, 399.

fault which was contrary to the Missouri statutes. This Court held the Missouri statutes were ineffective because the New York loan agreement was beyond Missouri's jurisdiction. The point that Missouri might refuse enforcement because the agreement, valid in New York, was contrary to the public policy of the former was not discussed. In *Bond v. Hume*, a few years later, this Court reserved the principle here in question.⁶ The *Aetna* case denied the constitutional power of the Texas courts to apply a Texas statute allowing a penalty and attorneys' fees against the company in a suit on an insurance contract made in a foreign jurisdiction with a person then a citizen of Tennessee because the "effect of such application would be to regulate business outside the State of Texas and control contracts made by citizens of other States in disregard of their laws under which penalties and attorney's fees are not recoverable." 266 U. S. at 399. The freedom from penalty and fee was deemed a part of the foreign contract and its effect on the public policy of Texas was not appraised.⁷

If upon examination of the Texas law it appears that the courts of Texas would refuse enforcement of an insurance contract where the beneficiaries have no insurable interest on the ground of its interference with local law, such refusal would be, in our opinion, within the constitutional power of the Texas courts. Rights acquired by contract outside a state are enforced within a state, certainly where its own citizens are concerned, but that principle excepts claimed rights so contrary to the law of the forum as to subvert the forum's view of public policy. Cf. *Loucks v. Standard Oil Co.*, 224 N. Y. 99, 110. It is "rudimentary" that a state "will not lend the aid of its courts to enforce a contract founded upon a foreign law where to do so would be repugnant to good morals, would lead to disturbance and disorganization of the local municipal law, or in other words, violate the public policy of the State where the en-

⁶ 243 U. S. at 25: "And of course we must not be understood as deciding whether the mere existence of a state statute punishing one who in bad faith, and because of such bad faith, had made an agreement to deliver in a contract of sale which would be otherwise valid, could become the basis of a public policy preventing the enforcement in Texas of contracts for sale and delivery made in another State which were there valid although one of the parties might have made the agreement to deliver in bad faith."

⁷ Before *Erie Railroad v. Tompkins*, 304 U. S. 64, this Court decided as a matter of general law that where time of notice is important the foreign law governs. *Boseman v. Insurance Co.*, 301 U. S. 196, 202.

forcement of the foreign contract is sought." *Bond v. Hume*, 243 U. S. 15, 21. Applying that reasoning this Court affirmed the federal court in following Texas' decisions which refused to enforce a valid foreign contract of guarantyship against a married woman. *Union Trust Co. v. Grosman*, 245 U. S. 412. Likewise state courts have been upheld in refusing to lend their aid to enforce valid foreign contracts which required the doing of prohibited acts within the state of the forum. *Bothwell v. Buckbee, Mears Company*, 275 U. S. 274, 278. Where this Court has required the state of the forum to apply the foreign law under the full faith and credit clause or under the Fourteenth Amendment it has recognized that a state is not required to enforce a law obnoxious to its public policy. *Bradford Electric Co. v. Clapper*, 286 U. S. 145, 160, 161; *Hartford Indemnity Co. v. Delta Co.*, 292 U. S. 143, 150. The rule was not applied where the parties to the contract acquired rights beyond the state's borders with no relation to anything done or to be done within the borders. *Home Insurance Company v. Dick*, 281 U. S. 397, 410.

In the *Head* case the foreign and local law differed as to the manner of extending insurance; in the *Aetna* case the difference arose from a local provision for attorney's fees and penalty; in the *Delta* case the time for notice varied in the two jurisdictions. In *New York Life Insurance Company v. Dodge*, 246 U. S. 357, it was said that a statute of the state of the forum, regulating the application of insurance reserves in case of default of premium was not effective, even while the insurance contract was a local contract and the insured a citizen of the state, to govern rights under a loan agreement made in a foreign jurisdiction. But these fall short of a public policy which protects citizens against the assumed dangers of insurance on their lives held by strangers. It is for the state to say whether a contract contrary to such a statute or rule of law is so offensive to its view of public welfare as to require its courts to close their doors to its enforcement.

Reversed.

Mr. Justice FRANKFURTER concurs in the result.